

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Donaji Cruz Lopez,)	
)	CIVIL ACTION №: <u>3:18-03459-JMC</u>
Plaintiff,)	
)	
vs.)	
)	COMPLAINT
Pennsylvania Tool Sales & Service, Inc.,)	(Jury Trial Requested)
)	
Defendant.)	
_____)	

The Plaintiff, complaining of the Defendant herein, would respectfully show unto this Honorable Court the following:

PARTIES

1. Plaintiff Donaji Cruz Lopez is a resident of Lexington County, South Carolina.
2. Defendant Pennsylvania Tool Sales & Service, Inc. is a foreign corporation organized and existing under the laws of a state other than the State of South Carolina. Upon information and belief, Defendant Pennsylvania Tool Sales & Service, Inc. transacts business in South Carolina and is registered to do business in this State.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S. Code § 1332, jurisdiction in this Court is proper based on diversity of citizenship of the parties and that the amount in controversy exceeds \$75,000.00.
4. The Columbia Division of this Court is the proper venue as this action involves the commission of tortious conduct that occurred in Lexington County, South Carolina, which is within the Columbia Division of the United States District Court of South Carolina.

FACTS

5. This action arises from a motor vehicle collision that occurred on January 11, 2018, on US-21 / Charleston Highway.

6. Plaintiff Donaji Cruz Lopez was driving her Toyota Camry on US-21 / Charleston Highway in a northbound direction.

7. A commercial vehicle owned by, and driven on behalf of, Defendant Pennsylvania Tool Sales & Service, Inc. was also traveling on US-21 / Charleston Highway in a northbound direction.

8. While traveling, Plaintiff Donaji Cruz Lopez had to slow down and stop due to traffic in front of her.

9. The commercial vehicle owned by, and driven on behalf of, Defendant Pennsylvania Tool Sales & Service, Inc. was driving in a distracted and reckless manner and too fast for conditions, and thereby failed to stop and/or slow down, resulting in a violent rear end collision into Plaintiff Donaji Cruz Lopez's vehicle.

10. The force of the collision was violent and significant, resulting in substantial property damage to the vehicles and bodily injuries to Plaintiff Donaji Cruz Lopez.

11. Plaintiff Donaji Cruz Lopez did not cause or contribute to the collision in any manner, and further she had no ability to avoid or prevent the collision.

12. As a result of the collision, Plaintiff Donaji Cruz Lopez suffered painful, traumatic, and permanent injuries throughout her entire body, including to her spine, upper extremities, and shoulders.

13. Plaintiff Donaji Cruz Lopez has undergone surgery for the injuries to her cervical spine and will likely be required to undergo additional surgeries and operations for her injuries.

14. Plaintiff Donaji Cruz Lopez has incurred, and will continue to incur in the future, medical expenses, and has suffered, and will continue to suffer, general damages such as physical and mental pain and suffering, emotional anguish, lost wages, loss of earning capacity, disability, property damage and a loss of enjoyment of life, all of which she are entitled to be compensated for as a direct and proximate result of Defendant's actions described above.

FIRST CAUSE OF ACTION
(Negligence / Gross Negligence)

15. Plaintiff Donaji Cruz Lopez alleges and incorporates by reference all prior allegations as previously set forth herein.

16. Defendant Pennsylvania Tool Sales & Service, Inc. owed Plaintiff a legal duty to operate a motor vehicle with due care, to act as a reasonable and prudent driver, and to obey all state and federal laws related to the operation of a motor vehicle on the roads of the State of South Carolina.

17. Defendant Pennsylvania Tool Sales & Service, Inc. breached it duties owed to Plaintiff Donaji Cruz Lopez, and, therefore, it was negligent, negligent *per se*, reckless, and grossly negligent in one or more of the following particulars:

- a. In driving too fast for conditions;
- b. In operating a motor vehicle while being distracted or failing to pay proper attention to the roadway;
- c. In failing to properly observe traffic conditions and vehicles in the roadway;
- d. In failing to keep a proper outlook;
- e. In failing to take a last clear chance in avoiding the collision;

- f. In failing to observe Plaintiff's vehicle;
- g. In failing to properly brake the vehicle to avoid the collision;
- h. In failing to keep a proper distance from Plaintiff's vehicle;
- i. In failing to take any evasive action by means to keep from causing the collision;
- j. In violating and failing to follow established policies and procedures regarding the operation of a motor vehicle;
- k. In negligently hiring, training, supervising, retaining, and entrusting a vehicle to its employee driver, Jeremy Nathan Kelly;
- l. In violating one or more provisions set forth in S.C. Code 56-5-10 *et. seq.* referred to as the South Carolina's Uniform Act Regulating Traffic on Highways;
- m. In failing to obey the statutory and common laws of the State of South Carolina;
- n. In failing to use the degree of caution and care that a reasonable driver would have used under the same or similar circumstances then and there prevailing;
- o. In operating the said motor vehicle in a careless, reckless, willful, and wanton disregard for others; and
- p. In otherwise being negligent or reckless as a matter of law as further discovery may reveal.

All of which were the direct and proximate cause of the injuries and damages to Plaintiff Donaji Cruz Lopez.

18. Plaintiff Donaji Cruz Lopez is entitled to a judgment against Defendant Pennsylvania Tool Sales & Service, Inc. to compensate her for the damages and injuries sustained.

19. Plaintiff Donaji Cruz Lopez is entitled to an award of punitive damages to the extent the Pennsylvania Tool Sales & Service, Inc.'s conduct was in violation of statutory laws or reckless, willful, or wanton.

20. A jury trial is requested.

WHEREFORE, Plaintiff Donaji Cruz Lopez prays this Honorable Court for judgment against the Defendants for: (a) actual and consequential damages; (b) punitive damages; (c) pre-judgment interest; (d) costs and attorney's fees in instituting this action; and (e) for such other and further legal and equitable relief as this Honorable Court may deem just and proper.

Respectfully submitted,

By: s/ Robert F. Goings
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December 14, 2018

Columbia, South Carolina